ORIGINAL

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1978

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SUPREME COURT, U.S.

No. 78-5421

OBIE RIDDICK,

Appellant,

ORIGINAL COPY

against

THE PEOPLE OF THE STATE OF NEW YORK,

Appellees.

MOTION TO DISMISS OR AFFIRM

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Appellee, the State of New York, by the undersigned counsel and pursuant to Supreme Court Rule 16, subdivision 1(d), moves to dismiss or affirm on the grounds that the decision of the court below is so obviously correct as to warrant no further review.

STATEMENT OF THE CASE

Appellee has no substantial quarrel with the statement of the case contained in the Jurisdictional Statement and with the statement of facts in the opinion below.

ARGUMENT

I. The Decision of the New York State Court of Appeals was so Manifestly Correct that no Further Review is Warranted.

The New York State Court of Appeals clearly correctly sustained the constitutionality of Sections 140.15(4) and

120.80(4) and (5) of the New York Criminal Procedure Law. These statutes authorize, upon probable cause, the warrantless entry of a home by a police officer in order to make an arrest.

In so doing, the Court of Appeals left undisturbed a cardinal and, until recently, virtually unchallenged principle of law which holds that a police officer who has reason to believe that a citizen has committed a felony may effectuate an arrest of that citizen at any place or time without the necessity of obtaining a warrant. It is submitted that the decision of the court below was mandated both by principles of common law and by the Fourth Amendment of the Constitution of the United States as interpreted by the decisions of this Court. See Hale, Historia Placitorum Coronae, History of Plea of Crown [1st Amer. ed. 1847] p. 92; Chitty, Criminal Law [3d Amer. from 2d London, ed., 1836 pp. 22-23; Henry v. United States, 361 U.S. 98 (1959); Draper v. United States, 358 U.S. 98 (1959); Ker v. California, 374 U.S. 23, 34-35 (1963). Indeed, this Court "has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant" holding that "such a requirement would constitute an intolerable handicap for legitimate law enforcement" Gerstein v. Pugh, 420 U.S. 103, 113 (1975).

In United States v. Watson, 423 U.S. 411 (1976), this Court was faced with a determination by the United States Court of Appeals for the Ninth Circuit which held unconstitutional an arrest made by United States Postal Inspectors on the grounds that no arrest warrant had been obtained. United States v. Watson, 504 F. 2d 849 (1974). The Postal Inspectors acted pursuant to statutory provisions expressly authorizing them upon reasonable cause to make felony arrests

without warrant [18 USC 3061(a)]. The Supreme Court held that: "The effect of the judgment of the Court of Appeals was to invalidate the statute as applied in this case and as applied to all situations where a court fails to find exigent circumstances justifying a warrantless arrest. We reverse that judgment." Watson, supra, at 415 (emphasis added). The Watson, supra, decision upholding the constitutionality of the aforementioned statute compelled the New York Court of Appeals to sustain the constitutionally indistinguishable statute which is the subject of the instant appeal.

It is true, of course, that the Watson decision does not expressly reach the question of whether or not, absent exigent circumstances, a police officer may make a warrantless entry of a home for purposes of effectuating an arrest. Watson, supra, at 418, fn. 6. But it is respectfully submitted that its underlying rationale, rooted as it is in the common law rule so almost universally adopted by federal and state statutes, is logically indistinguishable from the facts at bar. Neither the common law rule nor the statutes authorizing warrantless arrests draw a distinction between arrests made in public places and arrests made in homes. As Mr. Justice Marshall observed in dissent "Unless the approach of this opinion is to be fundamentally rejected, it will be difficult, if not impossible, to follow these sources to any but one conclusion - that entry to effect a warrantless arrest is permissible" Watson, supra, at 454.

In short, the Watson decision compelled the result reached below. Since the decision herein is indisputably

consistent with the Watson holding it is so "obviously correct as to warrant no further review." Stern and Gressman, Supreme Court Practice, Fifth Edition p. 535.

CONCLUSION

FOR THE FOREGOING REASONS, IT IS RESPECTFULLY SUBMITTED THAT THE CAUSE SHOULD BE DISMISSED OR AFFIRMED.

Respectfully submitted,

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for

JOHN J. SANTUCCI
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